Combating Racial Discrimination: the UN and its Member States

What next for Australia?

General Pinochet's arrest in 1999 for violations of the Convention Against Torture came as a shock to many people in Chile. In the same year the news that the Government of Australia might have violated the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) came as a shock to many people in Australia. Their Government described it as 'an insult to Australia', and an 'unbalanced decision reached by persons who did not understand Australia'. How has this come about and what has it to do with the World Conference against Racism planned for 2001?

Before Australia was colonized its indigenous peoples owned all its land. International law recognizes the right of a colonial government to take over land and extinguish what is called 'Native Title' provided certain conditions are met. The High Court of Australia reached two momentous decisions on this in 1992 and 1996. The Government then had to legislate to meet the law's demands.

The UN General Assembly did not contemplate such a situation in 1965 when it adopted ICERD. At that time it was anxious about *apartheid* in South Africa and a possible revival of Nazism in Europe. But the Convention is a living document. It has inspired actions and resolutions on many matters that were not considered in the drafting process: on the conflict between Hutu and Tutsi in Rwanda and Burundi; on ethnic cleansing in Bosnia and Kosovo;[1] on the suppression of the rights of the Kurds; on discrimination against Roma; on terrorism (including the shooting of worshippers in the Hebron mosque); on the ethnic dimension to informal residential segregation in cities and partial segregation in schoolroom classes; on discrimination on grounds of ethnic or national origin in immigration rules and procedures; on the dissemination of racist propaganda over the internet; and so on. ICERD embodies standards against which all such developments are to be judged.

Fifty years ago there was little talk of racism, or racial or sexual discrimination. It was taken for granted that people from different backgrounds were different, just as men and women were different, and unjustifiable inequalities in treatment were often not perceived as such. Now almost everyone has opinions on these matters, either to complain about or to defend an existing situation against what are thought to be unreasonable criticisms. There is much confusion in debate when words like 'racism' are used to make accusations about abuses of human rights. The best basis for resolving argument is to look to the law, which often means looking to a national law drawn up to meet international standards.

Delegates to the World Conference against Racism will assemble amid opposing arguments. Their governments will have instructed them to press for inclusion in the concluding declaration of certain propositions and to resist the inclusion of others. Many representatives from non-governmental organizations (NGOs) will be seeking to publicize particular groups' grievances or lobbying for closer international supervision of state action. Many of them will therefore turn to ICERD because it sets out obligations which three-quarters of the world's states have freely accepted. Would it be practicable to lay any more obligations upon states? How well do they discharge their current obligations? This MRG Report offers a concise guide to the complexities involved.

It does not, however, answer the Australian question: when, in 1999, the Australian Parliament passed the Native Title Amendment Act did it violate the state's obligations under international law? The Committee on the Elimination of Racial Discrimination (CERD) which, on behalf of states parties, examines compliance with the Convention, has no power to refer this issue to the International Court of Justice. But if another state party or the UN General Assembly were to challenge the Australian Government's action the International Court could rule on the matter. So when delegates to the World Conference make reference to ICERD they will deal with issues that could be as momentous for some governments as was the arrest of General Pinochet.

PENNY TWEEDIE/PANOS PICTURES

Aborigional Australians at a polling booth on election day, Alice Springs.

Background

The World Conference against Racism planned for 31 August to 7 September 2001 is intended to bring into focus lessons learned from earlier UN action against racial discrimination and to lay foundations for future action.

By bringing together representatives of the world's states, the UN has sponsored the formulation of universal norms, inspired measures to make these norms a reality, and has sought to maintain pressure on states to see that they respect their undertakings.

In 1963 the UN General Assembly adopted the Declaration on the Elimination of All Forms of Racial Discrimination which embodies the relevant norms and binds all UN member states. Two years later the principles were translated into a convention, or treaty, open to ratification by states. Those which ratify (or accede) bind themselves to fulfil the obligations set out primarily in Articles 1–9. The Convention was the first of its kind to require states to submit reports for consideration by a committee of experts – CERD – elected by the states parties to the Convention.

Reporting

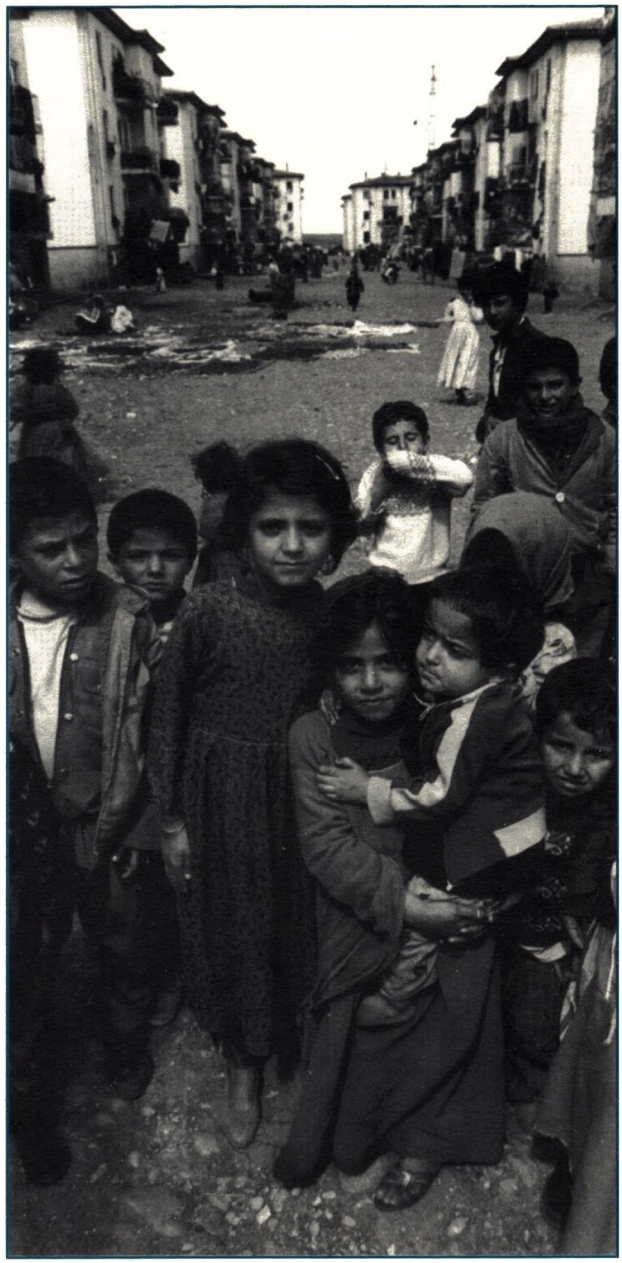
In the 1960s the focus was on standard-setting. In the 1970s the emphasis moved on to the reporting process. Initially, many states saw the Convention as directed against *apartheid* and as bearing upon their foreign rather than their domestic policies. Now states generally appreciate that racial discrimination can affect many aspects of civil, political, economic, social, and cultural public life. There has been a learning process, accelerated in some cases by NGOs which have publicized deficiencies; increasingly, they have submitted their own observations to CERD with views alternative to those of governments.

There are now 156 states parties. Some report regularly. Others do not or cannot. Some attend respectfully to CERD's recommendations; others see the presentation of a report as a defence of what the government, for political reasons, has decided to do anyway. Readers who find much to criticize in the limited realization of the Convention's objectives should note that by comparison with the 1960s there has been an astonishing advance in the readiness of governments to accept that outsiders have a legitimate interest in their internal action to combat racial discrimination.

If more states make declarations under Article 14, allowing individuals to bring complaints about racial discrimination, there could be a future phase in which CERD has to spend more time on formulating opinions on individual communications (or complaints) from individuals or groups.

Conferring

Some governments may regard the World Conference against Racism as an opportunity to further their foreign policies, deploring the racial discrimination reported in other countries. They may want to increase pressure on these countries while maintaining that, as their own records are clean, there is no reason for others to put pressure on them. Countries accused of failing to combat racial discrimination effectively will resist any such reproach. In such circumstances all delegations will have to look to ICERD as the one accepted international standard.



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Iraqi Kurdish refugees in Diyarbakir, Turkey.

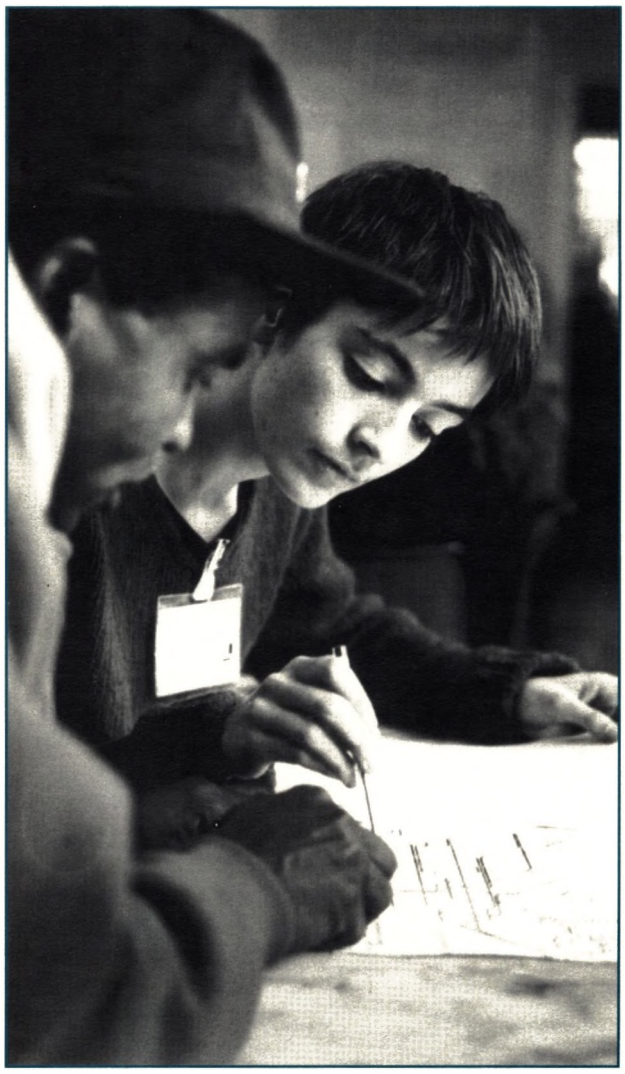
When the Convention was adopted state delegations to the UN were primarily concerned about racial discrimination in territories colonized by Western European countries and by the dangers, in those same countries, of the dissemination of doctrines of racial inequality. Yet the relevance of the Convention to other matters is now more widely appreciated. The fighting that followed the break-up of the former Yugoslavia had an ethnic dimension that was covered by the Convention. So too had the genocide in Rwanda and the continuing wars in the Great Lakes region. During the Asian financial crisis Indonesians of Chinese origin were attacked because they were considered 'Chinese', clearly a kind of discrimination based upon race, or

colour, or descent, or ethnic or national origin, or several of these grounds together. The World Conference needs to recognize that racial discrimination presents challenges to almost all governments in all regions. No major government can stand aside as if this were a problem only for others.

Recommendations as at November 2000[2]

MRG recommends that:

1. The World Conference against Racism should call for universal ratification of the Convention and should encourage the High Commissioner for Human Rights to explore ways of helping the least populous states to fulfil their reporting obligations.
2. The World Conference against Racism should encourage states parties to make declarations under Article 14 of ICERD recognizing the competence of CERD to receive communications from individuals and groups of individuals who believe their rights under the Convention have not been protected. This would reflect a commitment to the vision and objectives of the World Conference.
3. States participating in the World Conference that are party to ICERD could take this opportunity to arrange meetings in order to consider ways and find means to improve the fulfilment of reporting obligations under the Convention. In addition to addressing the need to be more diligent in the execution of this obligation, MRG urges states parties to give effect to CERD's Concluding Observations by taking appropriate action.
4. The World Conference should consider the contribution to anti-discrimination action that could be made by institutions whose influence was not sufficiently considered when ICERD was drafted: for example, the mass media and organized sport, and any similar activities, in order to associate them with its programme. The World Conference should encourage states parties to comment on any related developments when submitting periodic reports under the Convention.
5. MRG calls upon states to give attention to the links between economic exclusion and racial discrimination in the implementation of their obligations under ICERD, and when developing and promoting the action-oriented aims of the World Conference.
6. The World Conference should urge all states parties to ICERD to give effect to the Convention within their domestic legislation and to ensure its full and effective application. In pursuit of this objective the World Conference should initiate programmes with relevant UN bodies and NGOs aimed at providing greater visibility and awareness of ICERD and CERD at the local level.
7. The World Conference should encourage UN agencies, including the ILO and UNESCO, within their given fields of operation, to institute regional research programmes into the incidence and causes of racial discrimination, and the best means of combating it.
8. The World Conference should press appropriate UN bodies, such as Habitat, to give high priority to the need to analyse trends towards *de facto* racial segregation in the residential areas of cities and to identify measures that will prevent the transmission of racial inequality from one generation to the next.
9. The World Conference, in preparing its programme of action against racial discrimination, should encourage the compilation of separate regional programmes of action drawn up by the states of each region. The development of these programmes must be accompanied by a pledge on behalf of individual states and regional intergovernmental organizations to commit adequate resources and establish a monitoring process.
10. The World Conference should recommend that the General Assembly convene a special session in 2002 to consider reports on the implementation of regional programmes for countering racial discrimination and of the action undertaken by UN agencies.



HOWARD DAVIES/PANOS PICTURES

Asylum seeker at the Karibu Day Centre. The Centre offers asylum advice and a respite from the isolation which many asylum-seekers face. London, UK.

Notes

1 MRG usually uses 'Kosovo/a' but in this Profile and Report we have used the nomenclature used by the UN.

2 Suggestions on strengthening the implementation of ICERD and increasing CERD's effectiveness can be found in the report on the Satellite Meeting to the World Conference against Racism convened by MRG and the OHCHR in August 2000.

CHRIS STOWERS/PANOS PICTURES

Indonesians attempt to break into a Chinese-owned store in Jakarta.

This Profile is a summary of the Minority Rights Group International Report
COMBATING RACIAL DISCRIMINATION: THE UN AND ITS MEMBER STATES
by Michael Banton
Published November 2000, 36 pp., £5.95/$10.95 + postage
ISBN 1897 693 680
Additional copies of this Profile are available from MRG at 25p each or 10 for £2 from the address shown opposite.

Registered charity no. 282305. An international educational agency with consultative status with the United Nations (ECOSOC). A company limited by guarantee in the UK no. 1544957.

Printed in the UK on recycled paper.

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